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No. 90-701

Supreme Court, U.S.
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In the

Supreme Court of the United States

OCTOBER TERM, 1990

A.L. LOCKHART, Superintendent, Arkansas Department of Correction; LARRY NORRIS, Warden, Maximum Security Unit, Arkansas Department of Correction ..... *PETITIONERS*

V.

BILAL ALI SALAAM, a/k/a KEVIN ROBINSON ..... *RESPONDENT*

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR GRANTING THE WRIT

I. The Eighth Circuit has improperly substituted a "balancing test" in determining the reasonableness of a prison policy for the deference standard enunciated in *Turner v. Safley* creating a split in the circuit courts of appeals in the proper application of *Turner.*

Respondent claims in his Point II there is not a split in the circuits "merely because the circuits reach different results when the *Turner* standard is applied to *different* fact situations." (Emphasis added) In a recent case out of the Fourth Circuit, *Ali v. Dixon*, 912 F.2d 86 (August 28, 1990)

the *Turner* standard was applied to virtually the *same* fact situation which clearly illustrates the improper application of the *Turner* standard in this case.

Ali was an appeal of summary judgment granted in favor of corrections officials. Reversal was granted to further develop two issues, but the issue of the prison's staff use of commitment names only was affirmed. The Court states:

> Warden Dixon claimed in his affidavit that it is important for the staff to know the prisoners by name and that continued use of a prisoner's committed name facilitates the desired familiarity. There are obvious difficulties present if prison staff must memorize a second name after having made the effort to learn the first.

Petitioners put forth the same penological interests in the instant case as did the officials in *Ali*. They also put forth additional reasons. Their justification for the commitment name policy was found credible and controlling under the *Turner* standard by the district court. The Fourth Circuit recognizes the "obvious difficulties" in recognizing inmates by two names whereas the Eighth Circuit seeks to make an accommodation under their balancing test. The latter action is not appropriate under the *Turner* standard or the policy of judicial restraint in *Procunier v. Martinez*, 416 U.S. 396, 406 (1974).

II. The Eighth Circuit improperly applied the *Turner* analysis to a "reasonable alternative" and then failed to analyze the prison policy itself.

Respondent states in his Point III that petitioners challenge the Court's factual findings. The district court factual findings were in petitioners' favor. It is the legal analysis under *Turner* and the application of the law to these facts by the Eighth Circuit which is challenged. *Ali v.*

Dixon, supra, illustrates that the proper application of the *Turner standard* and proper deference to the judgment of correctional administrators was not afforded in the instant case.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,

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